

Informational Booklet

Answers to Questions about Right of Way Acquisition



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Commonwealth of Kentucky
Transportation Cabinet
Division of Right of Way and Utilities

PURPOSE

When a highway project is being planned in your community, it is only natural there will be questions to be answered.

The purpose of this booklet is to help answer these questions. It is not intended to answer all questions which may arise--only those that apply in most cases. Individual problems may be discussed with a Cabinet representative at any stage of the project planning and development.

As a concerned citizen and property owner, you will want to know the answers to:

- > Why here?
- > Why my property?
- > Who made the decision?

In proposing a highway facility, the Transportation Cabinet considers a wide range of data to arrive at preliminary locations and designs that will be as compatible as possible with the community it will serve. Local terrain is examined, area maps are studied, and cost estimates are made to select the best possible highway. Consideration is also given to the least property disruption and project cost.

The Transportation Cabinet analyzes the social, economic, and environmental effects a project may have on your community. Particular attention is given to those effects that result in direct or indirect benefits or loss to a community or to highway users. The evaluation includes all effects that are relevant and applicable to the particular location or design under consideration.

The findings of these studies are compiled into comprehensive reports which are reviewed by federal, state, and local government agencies. Following evaluation and analysis of information received, location and design approvals are requested from the Federal Highway Administration or the State Highway Engineer.

As you can see, no one person decides where a highway will be located or whose property will be affected. It is a joint decision, based on the need to protect the safety, health, and welfare of the traveling public.

WHAT HAPPENS NEXT?

The Kentucky Transportation Cabinet's Division of Right of Way and Utilities is responsible for: (1) acquisition of all real property needed for a highway improvement; (2) relocation assistance to those families, individuals, businesses, farm operations, nonprofit organizations and billboards displaced by the project; and (3) adjustments or relocation of public and private utilities required for construction of a highway.

Acquisition of the needed right of way normally begins after the design engineering work has been completed and location and design approvals are obtained. Federal and state laws apply to every project to ensure that all persons receive fair and equitable treatment.

Right of way acquisition is normally handled by the Cabinet's staff located in the District Office that serves your county.

Depending upon the size, location, and complexity of a project, the Cabinet may contract with a qualified consultant to assist in one or more phases of the acquisition process. Regardless of whether the acquisition is handled by the Cabinet's Right of Way staff or by a consultant, all applicable federal and state laws and regulations must be followed.

If this is the first time you have been affected by a highway project, you may have several questions about the process.

WHO WILL CONTACT ME?

After right of way acquisition has been authorized, most normally the first contact will be by an appraiser. If you have a residence, business, farm, or a nonprofit organization being acquired, the first person to contact you may be a relocation assistance agent.

HOW WILL MY COMPENSATION BE DETERMINED?

An appraiser is assigned to make a fair market value appraisal of each property before the acquisition and of the remaining property after the acquisition. The difference between these two values is the amount of compensation to be offered for the property being acquired.

The appraiser will explain the acquisition and the physical changes to your property, and will offer you the opportunity to be present for the property inspection. You should share with the appraiser any features about the property you feel will contribute to value and voice your concerns about the effects the acquisition will have.

Each appraisal is then reviewed by a review appraiser to ensure that all items compensable by law are included.

In some cases when the acquisition is non-complex in nature, an appraisal is not required; however, an estimate of value is calculated based on market data and an offer is made based on this estimate.

WHO WILL PRESENT THE OFFER FOR MY PROPERTY?

A buyer will make an appointment to again explain the acquisition. The buyer will verify the ownership aspects, review the title report, and present a written offer to purchase. In no event will the amount offered be less than the approved appraisal review amount or estimate of value.

IF THE ACQUISITION LEAVES ME WITH A REMAINDER I CANNOT USE, WILL THE STATE OFFER TO BUY IT?

If the Cabinet determines that you are left with a remnant that has little or no value or utility to you, the State may offer to buy the remnant.

WHAT IF I HAVE PERSONAL PROPERTY TO MOVE?

All property owners and tenants who have to move personal property will be contacted personally by a relocation agent. Relocation benefits may include such things as moving expenses, mortgage interest differential and replacement housing payments. A relocation assistance agent will explain the benefits to which you are entitled and will provide an informational booklet.

MAY I KEEP MY HOME OR OTHER BUILDINGS?

When circumstances permit, owners will be afforded the opportunity to retain acquired improvements (buildings, signs, etc.) at the salvage value determined during the appraisal process. Retention of these improvements will be made a part of the settlement, and the salvage value will be deducted from the total purchase price. The removal cost of any improvements retained will be your responsibility.

If you retain a building, it will be your responsibility to have it inspected for the presence of asbestos containing material (ACM). It is also your responsibility to have any ACM removed that would be disturbed by the moving or demolition of the building. All inspections for ACM, as well as its removal and disposal, must be done in accordance with federal, state and local laws and regulations.

You will be required to sign a contract and to post a performance bond to ensure the prompt removal of any building retained.

The bond will be released upon satisfactory completion of the building removal.

WHAT IF I WORK FOR THE STATE?

Acquisitions from state employees are treated with the same high degree of fairness as all other property owners. However, KRS 45A.045 (8) requires that a certification to that effect be approved by the Secretary of the Finance and Administration Cabinet and the Governor. Because of these required approvals, it should be understood that payment cannot be made as quickly as normal.

WHEN WILL I BE PAID FOR MY PROPERTY?

Approximately four to six weeks after you sign the appropriate documents, a check will be available for delivery to you.

WHAT ABOUT THE LOAN I HAVE ON MY PROPERTY?

It is your responsibility to obtain releases for all encumbrances on the property you are selling. A right of way agent will, if necessary, assist you in obtaining releases. When only a portion of your property is acquired, you may only need a partial release of the encumbrance. Partial releases apply only to the property acquired and leave the balance of the property subject to the original encumbrance. Delivery of the check may be delayed until all encumbrances on the acquired property are released.

WILL IT COST ME ANYTHING TO CONVEY MY PROPERTY TO THE STATE?

The Cabinet will reimburse you for reasonable and necessary expenses that are normally incurred to convey property, such as prepayment penalties on existing recorded mortgages, recording fees, notary fees, and property transfer taxes. The buyer will fully explain these benefits and, if you have paid these fees, will assist you in submitting a claim for reimbursement. Expenses for professional services you have sought may not be eligible for reimbursement.

WILL MY PROPERTY TAXES BE PRORATED?

The Transportation Cabinet will reimburse you for a prorated portion of the real property taxes you have paid, for the tax year in which the property is acquired.

WILL I HAVE TO PAY INCOME TAX ON THE MONEY I RECEIVE WHEN I SELL MY PROPERTY TO THE STATE?

Since tax laws and interpretations vary from time to time, you should check with your personal tax advisor or your local Internal Revenue Service office concerning your particular situation.

WHAT HAPPENS IF I DECIDE NOT TO ACCEPT THE STATE'S OFFER?

In most cases, an agreement is reached. However, if a property owner feels that the Cabinet's offer is not acceptable, it can be refused.

Since the Cabinet must acquire the needed property and move toward construction of the proposed highway, Kentucky law provides that the Transportation Cabinet can place the matter before the courts. These proceedings are called condemnation actions and are briefly explained below:

- (1) The Transportation Cabinet will initiate a condemnation action to obtain the real property needed by filing a petition in the circuit court in the county where the property is located.
- (2) The judge will appoint three commissioners to view the property and establish a value for the portion acquired. This value is called a Commissioners' Award.
- (3) Subsequently, the property owner will be served with a summons notifying them of the condemnation and the amount of the Commissioners' Award.
- (4) After the time prescribed by law, judgment may be entered in court granting the Transportation Cabinet possession of the real property condemned. Under no circumstances will the property owner be required to surrender possession of the real property until the Commissioners' Award is deposited with the circuit court clerk.
- (5) Both the property owner and the Transportation Cabinet have the right to file exceptions objecting to the amount of the Commissioners' Award and to seek a jury trial. The Commissioners' Award is not binding on a party who properly files exceptions.

(6) The property owner may withdraw the entire amount of the Commissioners' Award subject to satisfaction of encumbrances and to final resolution of the condemnation action.

(7) If the property owner has withdrawn the amount of the Commissioners' Award and a jury trial results in a lesser award, the property owner will be required to refund the difference plus interest. If the Commissioners' Award has not been withdrawn, the property owner will not be required to pay interest on the difference between the two awards.

(8) If the jury award is larger than the Commissioners' Award, regardless of whether the property owner withdrew it or not, the Transportation Cabinet will pay the property owner the difference between the two awards, plus interest.

(9) Both the property owner and the Transportation Cabinet may appeal a circuit court jury award to the Court of Appeals.

WILL MY REPLACEMENT HOUSING PAYMENT CHANGE AS A RESULT OF A TRIAL OR SETTLEMENT?

If for any reason, the amount of final settlement differs from the amount of the initial offer, an owner's replacement housing payment may also change.

TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Title VI of the Civil Rights act of 1964 prohibits discrimination on the basis of race, color, sex, national origin, age, and disability in any program or activity receiving federal aid. The Kentucky Transportation Cabinet is committed to providing its constituency with the highest quantity and quality of service without regard to the recipient's race, color, sex, national origin, or disability.

WHERE CAN I OBTAIN ANSWERS TO OTHER QUESTIONS?

By contacting the Right of Way Supervisor for your district, whose address is listed below.

DISTRICT 1

KY Dam Road
P. O. Box 3010
Paducah, KY 42002-3010
(270) 898-2431

DISTRICT 2

1840 North Main Street
P. O. Box 600
Madisonville, KY 42431-9965
(270) 824-7080

DISTRICT 3

900 Morgantown Road
P. O. Box 599
Bowling Green, KY 42102-0599
(270) 746-7898

DISTRICT 4

634 East Dixie
P. O. Box 309
Elizabethtown, KY 42702-0309
(270) 766-5066

DISTRICT 5

977 Phillips Lane
P. O. Box 37090
Louisville, KY 40233-7090
(502) 367-6411

DISTRICT 6

421-423 Buttermilk Pike & I-75
P. O. Box 17130
Covington, KY 41017-0130
(859) 341-2700

DISTRICT 7

763 New Circle Road, NW
P. O. Box 11127
Lexington, KY 40512-1127
(859) 246-2355

DISTRICT 8

US 27 South
P. O. Box 780
Somerset, KY 42502-0780
(606) 677-4017

DISTRICT 9

Elizaville Road
P. O. Box 347
Flemingsburg, KY 41041-0347
(606) 845-2551

DISTRICT 10

Highway 15
P. O. Box 621
Jackson, KY 41339-0621
(606) 666-8841

DISTRICT 11

Railroad Avenue
P. O. Box 250
Manchester, KY 40962-0250
(606) 598-2145

DISTRICT 12

109 Loraine Street
P. O. Box 2468
Pikeville, KY 41501
(606) 433-7791

KENTUCKY HIGHWAY DISTRICTS**DISTRICT OFFICE**

- 1 PADUCAH
- 2 MADISONVILLE
- 3 BOWLING GREEN
- 4 ELIZABETHTOWN
- 5 LOUISVILLE
- 6 COVINGTON
- 7 LEXINGTON
- 8 SOMERSET
- 9 FLEMINGSBURG
- 10 JACKSON
- 11 MANCHESTER
- 12 PIKEVILLE



GLOSSARY

Appraisal - A written, documented opinion of value based on the analysis of factual data such as the sale of comparable properties, building costs, rentals, and land leases.

Asbestos Containing Material (ACM) - Components of buildings that involve more than 1% content of the mineral asbestos. (Examples: roof and exterior wall shingles, floor coverings, and pipe insulation or wrappings.)

Compensation - The amount of loss for which property owners are paid when property is acquired by the Cabinet.

Encumbrance - Any right or interest which detracts from the free and clear fee simple ownership of property. (Examples: mortgages, mechanic's liens, tax liens, utility and access easements, judgments, leases, and separate mineral ownership.)

Fair Market Value - That price for which property can be sold in the open market by a willing seller to a willing buyer, neither acting under compulsion, and both exercising reasonable judgment.

Performance Bond - A security deposit that provides for recovery if the work to be accomplished is not done according to the agreement. The performance bond can be a certified check, cashier's check or an insurance bond.

Real Property - The physical real estate acquired for the purpose of constructing and maintaining a highway system.

The ownership rights acquired by the Transportation Cabinet fall into three categories. They are:

Fee Simple - The absolute and unconditional ownership rights to property.

Permanent Easement - An interest in real estate allowing the Cabinet to use the property for a defined purpose forever. (Example: to construct and maintain a drainage structure.)

Temporary Easement - An interest in real estate allowing the Cabinet to use the property for a defined purpose for a limited amount of time, after which the property reverts to the owner. (Example: construction of an entrance.)

Salvage Value - The expected worth of a structure (or part of a structure) that is removed from the site for use elsewhere.

NOTES: